

EMPLOYER STATUS DETERMINATION

Joint Council of Dining Car Employees

The Joint Council of Dining Car Employees has been an employer under the Railroad Retirement Act (RRA) (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §351 et seq.), with service creditable from October 25, 1937 to date. (See Legal Opinion L-49-390.)

The Joint Council of Dining Car Employees was a subordinate organization of the Hotel Employees & Restaurant Employees International Union (International Union), which was held in Legal Opinion L-49-390 not to be an employer covered by the Acts. Legal Opinion L-49-390 indicated that the Joint Council consisted of 15 locals, of which Local 495 was one. In a telephone conversation with a member of the staff of the Bureau of Law on March 26, 1992, Isaac Monroe, Administrative Assistant to the General President of the International Union and Secretary of Local 43 in Chicago, Illinois, stated that Local 43 (which was not one of the original 15 locals which formed the Joint Council had resulted from the merger of Locals 385 and 351 in the 1970's. Mr. Monroe also stated that prior to the end of October 1991, all of the other locals, except for Local 43 and Local 495 had merged (apparently at various times). Mr. Monroe stated that at a convention of the International Union in July 1991, a resolution was adopted to

dissolve the Joint Council at the end of October 1991. Mr. Monroe provided a copy of a letter to him dated November 6, 1991 from the General President of the International Union wherein the General President stated that due to the merger of Local 495, Dining Car Employees Local, Washington, D.C. into Local 43, Chicago, Illinois, the Joint Council ceased to exist as of October 31, 1991.

Based upon the information furnished, it is determined that the Joint Council of Dining Car Employees ceased to be an employer under the RRA and the RUIA effective with the close of business on October 31, 1991.

Glen L. Bower

C. J. Chamberlain

Andrew F. Reardon

MPDadabo:mpd

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Please ask Edward T. Hanley, General President of the Hotel Employees & Restaurant Employees International Union the following questions:

1. You stated in your letter of November 6, 1991 to Isaac Monroe that due to the merger of Local 495, Dining Car Employees Local, Washington, D.C. into Local 43, Chicago, Illinois, the Joint Council of Dining Car Employees ceased to exist as of October 31, 1991. The 1949 legal opinion (L-49-390) which held the Joint Council to be an employer covered by the RRA and the RUIA indicated that it consisted of 15 locals, of which Local 495 was one. **Why would the merger of Local 495 into Local 43 result in the cessation of the Joint Council? Was any formal action taken (e.g., a resolution) and, if so, by whom?**
2. **What happened to the other 14 locals which formed the original Joint Council?** (See list on page 5 of Legal Opinion L-49-390.)
3. The Office of Compensation and Certification has indicated that the BA-3a, Annual Report of Service and Compensation, which was filed for the Joint Council (BA No.8930) for both 1989 and 1990 showed that only employees of Local 43 were reporting as employees of the Joint Council for those years (3 employees in 1989 and 2 employees in 1990). Since Local 43 survived the merger of Local 495 and Local 43, why would employees of Local 43 not be considered to continue to be employees of the Joint Council?

Mr. Isaac Monroe
Administrative Assistant to the
General President
Hotel Employees & Restaurant
Employees International Union
1130 South Wabash Ave., Suite 405
Chicago, Illinois 60605

In reply refer to
C.565-92

Dear Mr. Monroe:

This is in reference to your recent inquiry regarding the status of the Joint Council of Dining Car Employees as an employer under the Railroad Retirement Act (RRA) (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. §351 et seq.) and of the status of employees of Local 43 as employee representatives under the Acts.

In a telephone conversation on March 26, 1992, you indicated that you would forward a copy of the resolution to dissolve the Joint Council which was adopted by the Hotel Employees & Restaurant Employees International Union last July. I indicated to you that the Board's regulations (20 CFR 205.3) set forth a list of factors which must be considered in order to make a determination as to whether an individual should be considered to be an employee representative and that I would send you a letter inquiring about those factors. Please respond to each question below with respect to each employee of Local 43 who might be considered to be an employee representative.

1. Please provide the name of the last railroad or other employer under the RRA and the RUIA by which the individual was employed, and the period of employment.
2. The present official name of the organization by which the individual is employed, as well as any other name(s) under which that organization operated previously.
3. The date on which the organization was founded.

4. The title of the position held by the individual within the organization, and the duties of said position.

-2-

Mr. Isaac Monroe

5. The method by which the individual, or the person to whom he or she is regularly assigned or by whom he or she is regularly employed, was authorized to represent members of the organization in negotiating with their employers, the date on which the individual was so authorized, and the time period covered by said authorization.
6. The purpose or business of the organization as reflected by its constitution and by-laws.
7. The extent to which the organization is, and has been recognized as, representative of crafts or classes of employees in the railroad industry.
8. The extent to which the purposes and businesses of the organization are and have been to promote the interests of employees in the railroad industry as indicated by:
 - (a) The specific employee group(s) represented; and
 - (b) The proportion of members that are employed by railroad employers in relation to those members that are employed by non-railroad employers.
9. Whether the organization has been certified by the National Mediation Board as a representative of any class of employees of any company.
10. If the organization has not been certified as representative of any class of employees, the manner and method by which the organization determined that it was the duly authorized representative of such employees.
11. Whether the organization participates or is authorized to participate in the selection of labor members of the National Railroad Adjustment Board.
12. Whether the organization was assisted by any carrier by railroad, express company, or sleeping car company, directly or indirectly, in its formation, in influencing employees to join the organization, financially, or in the collection of dues, fees, assessments, or any

contributions payable to the organization.

In order to avoid any unnecessary break in the crediting of service and compensation for you and any other employee of Local 43 who may be considered to be an employee representative, no recommendation as to the termination of the employer status of the Joint Council of Dining Car Employees will be made until such time as a

-3-

Mr. Isaac Monroe

determination can also be made as to service as employee representatives.

If you have any questions about any of the above factors, please do not hesitate to call me (312/751-4945). I appreciate your assistance in this matter.

Very truly yours,

Marguerite P. Dadabo
General Attorney

cc: Labor Member

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